

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ELLEN LUNTS, and ALEXANDER LUNTS

Plaintiffs,

07-CV-6272T

v.

ROCHESTER CITY SCHOOL DISTRICT,
SUNY EMPIRE STATE COLLEGE,
STATE UNIVERSITY OF NEW YORK (SUNY)

**DECISION
and ORDER**

Defendants.

Plaintiffs Ellen Lunts, and Alexander Lunts, proceeding pro se, bring this action pursuant to Title VII of the Civil Rights Act of 1964 ("Title VII") and the Equal Pay Act of 1963 claiming that the defendants SUNY Empire State College and the State University of New York ("defendants") discriminated against Ellen Lunts ("Lunts" or "plaintiff") on the basis of her gender, color, and national origin. Specifically, plaintiff, who was employed under a two-year contract as an assistant professor with Empire State College, alleges that she was unlawfully terminated from her position on grounds that she is female, and is of foreign origin. Plaintiff also alleges that she did not receive equal pay and was harassed because of her gender and origin, and was retaliated against for complaining of discrimination.

Plaintiffs move for a default judgment against defendant City of Rochester School District (the "School District") According to the plaintiffs, the School District failed to answer the Complaint in a timely fashion. Whether or not a default judgment should be

entered in a case is a decision that is left to the sound discretion of the court. Aldabe v. Aldabe, 616 F.2d 1089 (9th Circ. 1980); Bross Utilities Service Corp. v. Aboubshait, 489 F.Supp. 1366 (D. Conn. 1980); aff'd 646 F.2d 559 (2nd Circ.). Prior to seeking a default judgment, a plaintiff must first obtain an entry of default from the Clerk of the Court. In the instant case, the plaintiffs have not obtained an entry of default against the School District, and indeed, the School District has answered the plaintiffs' Complaint (See Docket item no. 42, filed October 27, 2008). Accordingly, I find that entry of a default judgment against the School District is not warranted.

Plaintiffs' motion for a default judgment is denied.

ALL OF THE ABOVE IS SO ORDERED.

S/ Michael A. Telesca

MICHAEL A. TELESCA
United States District Judge

Dated: Rochester, New York
April 2, 2009